

**Next Steps (After receiving Booth Energy's written proposal, including signed application and revised drawings)**

- 1) Issue 30 day public notice;
- 2) Corps provide comments received on the public notice to Booth Energy for a rebuttal, clarification, or modification (30 days);
- 3) Determine if a public hearing will be held;
- 4) Substantive comments will be addressed;
- 5) Final SEIS will be revised and published in the Federal Register upon receipt of the information under "Outstanding Issues";
- 6) Substantive comments received on the Final SEIS will be addressed;
- 7) Thirty days (30) after the publication of the Final SEIS, the Corps/FHWA will begin preparing a Record of Decision, which will document the results of the NEPA process and the permit decision.

**Outstanding Issues that could be addressed during public comment period:**

**Issue 1 – Compliance with the 404(b)(1) Guidelines/LEDPA:** Consol (former applicant) indicated to the Corps they could eliminate Valley Fills 1 and 2. Booth Energy indicated to the Corps during the Feb 2017 meeting that they want to pursue 12 valley fills, including Valley Fill No. 1. Valley Fill No. 2 would remain deleted from the mine plan. Booth Energy indicated it would not be practicable to eliminate Valley Fill No. 1 because approximately two miles of proposed roadway would be eliminated. Booth Energy indicated the road would not have a logical terminus.

- Corps requested that Booth Energy provide a revised alternative analysis (pursuant to 404(b)(1) Guidelines and NEPA) to demonstrate why it is no longer practicable to eliminate Valley Fill No. 1 from the mine plan.

**Resolution:** Achieve a common understanding of practicable alternatives that satisfy the purpose and need for the project.

**Issue 2 – Endangered Species:** Endangered Species Act Section 7 consultation must be completed and address newly listed endangered/threatened species.

- Coordination with the United States Fish and Wildlife Service (USFWS) will be required to address the Indiana bat, the northern long-eared bat, the gray bat, and the Big Sandy Crayfish. The Corps recommended that Booth Energy seek guidance from the USFWS on the available options to address endangered/threatened species issues.
- Booth Energy must coordinate with USFWS to determine whether surveys will be necessary. Previously completed bat surveys expired in Summer 2015.
- Bat surveys must be conducted between **May 15 and August 15**
- Crayfish surveys must be conducted between **September 11 and July 19**.
- Consultations range from 30 to 135 days depending on findings and informal versus formal consultation.

**Resolution:** Determine the need for surveys and complete informal or formal consultation with the USFWS on project effects to endangered/threatened species.

**Issue 3 – Socioeconomic Data:** Socioeconomic data in the draft supplemental EIS (SEIS) is outdated.

- Corps requested that Booth Energy provide updated socioeconomic data to incorporate into the final SEIS.

**Resolution:** Adequate evaluation of socioeconomic impacts.

**Issue 4 – Historic Properties:** A memorandum of agreement (MOA) was previously executed to mitigate adverse effects to historic properties within the area of Valley Fill No. 1. The MOA will need to be updated to change the name from Consol to Booth Energy. As part of the MOA, a Phase III survey must be completed. In addition, a windshield survey must be completed to identify any architectural structures that may have become 50 years old since 2010. Depending on the findings, coordination with the State Historic Preservation Office may be required.

**Resolution:** Compliance with Section 106 of the National Historic Preservation Act.

**Issue 5 – Final SEIS Revisions:** The Corps and the FHWA will have to revise the Final SEIS to reflect the modified project and to address endangered species, updated socioeconomic data, historic properties, and alternatives.

**Resolution:** Upon receipt of the above-mentioned requested information, the SEIS will be revised and published in the Federal Register.

### **State Permits**

- Surface Mining Control and Reclamation Act (SMCRA) permit dated November 22, 2011; SMCRA permit was renewed without Valley Fill 2 (June 18, 2013); WVDEP has indicated the permit transfers to Booth Energy have not been completed
- Section 401 of the Clean Water Act water quality certification dated November 23, 2011 (issued for 13 valley fills; Corps Public Notice will serve as a request to the West Virginia Department of Environmental Protection on whether a modification to the existing 401 will be required); and
- Section 402 of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit dated October 29, 2012 (Permit will expire October 2017; NPDES permit was modified in August 2013 to remove the outlet associated with Valley Fill 2; WVDEP has indicated the permit transfers to Booth Energy have not been completed).

### **Compensatory Mitigation**

- Revised CMP provided in 2013 using the WV Stream and Wetland Valuation Metric (SWVM) and developed in accordance with 2008 Mitigation Rule.

<b>Proposed Impacts by Booth Energy</b>	<b>Lf</b>	<b>Ac</b>
Permanent Impacts	39285	4.7
Temporary Impacts	9,215	1.519
Debit Sub-Total	48,500	6.219
Temporal Impacts <sup>1</sup>	14,500	--
<b>TOTAL DEBIT</b>	<b>63,050</b>	<b>6.219</b>
<b>No Net Loss Mitigation</b>		
On-Site Establishment	29,079	3.826
Off-Site Establishment	16,345	1.973
On-Site Restoration	9,215	1.520
Credit Sub-Total	54,639	7.319
<b>Proposed Mitigation</b>	<b>Lf</b>	<b>Ac</b>
<b>Supplemental and Temporal Mitigation</b>		
Off-Site Enhancement	4,098	1.308
Off-Site Restoration <sup>2</sup>	4,944	2.122
Off-Site Preservation	8,647	1.539
Water Quality Improvement <sup>3</sup>	--	--
Credit Sub-Total	17,689	4.969
<b>Total Credit</b>	<b>72,328</b>	<b>12.228</b>
<b>Excess Credit (Total Credit minus Total Debit)</b>	<b>9,278</b>	<b>6.009</b>

<sup>1</sup> An additional 30% of the total impact length would be compensated for temporal losses during the operation. A total of 10% for every 5 years would be provided for a total of a 15-year active mine life.

<sup>2</sup> Water Quality Improvement segment.

<sup>3</sup> No length shown; replaced at a 1:1 temporary impact replacement ratio.